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REMARKS**I. Introduction**

Claims 1-7 and 10-23 are pending in the above application.

Claims 1, 6, 13, 17 and 19 stand objected to for lacking indentations.

Claims 11, 12, 15, 16, 18, 21 and 22 stand rejected under 35 U.S.C. § 112 ¶ 2.

Claims 1-7 and 10-23 stand rejected under 35 U.S.C. § 103.

Claims 1, 6, 13, 17 and 19 are independent claims.

II. Amendments

Claims 1, 6, 13, 17 and 19 have been represented with indentations as requested.

The inclusion of indentations is not believed to constitute an amendment and these claims have not been denoted as being currently amended. Accordingly, the outstanding objection on these claims is believed to be satisfied.

Claims 11, 12, 15, 16, 18, 21 and 22 have been amended to remove the exemplary language pointed out by the Office action in the rejection under 35 U.S.C. § 112 ¶ 2. Accordingly, the rejection of these claims is believed to be satisfied.

Claims 1, 2, 6, 19 and 20 have been amended to more distinctly recite that which applicant regards as the inventions therein.

No new matter has been added.

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III. Prior Art Rejections

A. Claims 1-3, 6-7, 10-16 and 19-23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Klinger et al. (U.S. Pub. No. 2003/0003896) in view of Dent (U.S. Pat. No. 5,081,679).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *Ecolochem Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 56 U.S.P.Q.2d (BNA) 1065 (Fed. Cir. 2000); *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2D (BNA) 1614, 1617 (Fed. Cir. 1999); *In re Jones*, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992); and *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). See also MPEP 2143.01.

Neither Klinger nor Dent, taken alone or in combination, disclose or suggest all of the limitations of amended claims 1, 6, 13 and 19. Klinger discloses an encryption scheme in a wireless communication system (aka cellular phone) in which telephony data is encrypted based on receipt of SABM/SABMUA messages at the initiation and termination of the call. Abs.; ¶s [0032]-[0033], [0088]-[0094], [0100]-[0101]. The architecture of Klinger is primarily intended for a constant connection environment "the nature of typical telephony communication ... is such that data exchange according to a protocol is always occurring after call establishment ... this characteristic is used advantageously in keeping the cryptosystem synchronized." Klinger, ¶ [0033]. Klinger discloses to reestablish the connection when it is lost and to generate a new key when reestablishing the connection based on the receipt of the SABM/SABMU messages:

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"[t]here is a chance ... for a telephony channel to be completely lost[. T]his requires the RU and base station to reestablish a telephony data channel[. D]uring the channel reestablishment, transfers of SABM and SABMU messages occur." Klinger, ¶ [0033]. See also, ¶ [0090] "the SABM/SABUA messages occur at a recognizable point in connection establishment"; and ¶s [0093]-[0094] "if the message is a SABM/SABMU message, an RC4 state box is generated at block 1310, and an LCC packet is created at block 1310[. A]t this point, the synchronization should be with a 'new' RC4 key."

The generation of a new key in Klinger is merely associated with making a new connection. Klinger is not particularly concerned with an architecture in which intermediate components in the communication channel may routinely change during a connection, such as CODECs in an IP packetized based communication channel. In short, Klinger does not disclose to generate a second key stream when a component used to transmit the Real Time Protocol voice packets changes during the communication session as now substantially recited by amended claims 1 and 19. Likewise, Klinger does not generate a second key when the system switches from a first communication parameter to a second communication parameter, as required by amended claim 6. Klinger does not generate a second Real Time Protocol key stream for encrypting the voice packets in response to a request to change communication parameters for the same media stream during a communication session, as recited by amended claim 13.

Dent discloses to resynchronize during a cellular tower handoff, again referring to a cellular phone system. Abs. Dent is not concerned with an Internet protocol network as recited in the claims.

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Accordingly, as neither Klinger nor Dent, taken alone or in combination, disclose or suggest all of the limitations of amended claims 1, 6, 13 and 19, the combination of Klinger and Dent does not render these claims unpatentable. Likewise, as claims 2 and 3, depend on claim 1, claims 7 and 10-12 depend on claim 6 and claims 20-23 depend on claim 19, the combination of Klinger and Dent does render these claim unpatentable.

B. Claims 4 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Klinger in view of Dent and in view of Crichton et al. (U.S. Pub. No. 2002/0031126).

The addition of Crichton does not cure the deficiencies of the combination of Klinger and Dent as discussed above. Crichton is relied on merely for the proposition that use of a gateway controller is known. As claims 4 and 5 depend on claim 1, claims 4 and 5 are patentable at least for the same reasons as claim 1.

C. Claims 17 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Klinger in view of Crichton in view of Dent.

The combination of Klinger, Crichton and Dent, does not render claims 17 and 18 unpatentable. Klinger does not generate a second Real Time Protocol key stream for encrypting the voice packets during a communication session in response to a collision detection wherein the multimedia terminal adapters have the same source identifier, as recited by amended claim 17. Crichton also does not disclose such and the Office does not rely on Crichton as disclosing such. While the Office action asserts that Dent discloses "the generation of a new key when there is no synchronization" the Office

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action does not allege that Dent utilizes a collision detection as recited in amended claim 17. Accordingly, as neither Klinger, Crichton nor Dent, taken alone or in combination, disclose all of the limitations of amended claim 17, the combination thereof does not render amended claim 17, nor claim 18 which depends therefrom, unpatentable.

D. Applicants note that all of the above rejections rely on Klinger as § 102(e) prior art to the above application. Crichton is also relied on as § 102(e) prior art. However, neither Klinger nor Crichton clearly qualify as 102(e) prior art. Klinger was filed on December 19, 2001 as U.S. Serial No. 10/028,573 and claims priority to U.S. Provisional application 60/256,668 filed on December 19, 2000. The filing date of Klinger (December 19, 2001) is after the filing date of the above application (January 16, 2001) and the Office action appears to rely on the provisional filing date of Klinger. Likewise, Crichton was filed on September 12, 2001 as U.S. Serial No. 09/953,317 (after the filing date of the above application) and claims priority to provisional application 60/232,094 filed on September 12, 2000. Applicant respectfully traverses relying on the provisional filing dates of Klinger and Crichton, especially since the utility applications of Klinger and Crichton contain substantially more disclosure including more figures and description, than their provisionals. Since utility applications may and often do contain additional subject matter not disclosed in the provisional, there is simply no logic nor legal foundation for blindly relying a provisional filing date as the 102(e) date of a reference, contrary to the unsupported and unexplained statements in MPEP 706.02(a) and 2136.01. Notably, an applicant who wishes to rely on their own provisional filing date must actually establish that the provisional actually discloses what is claimed, i.e.

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"conforms to 35 U.S.C. 112, first paragraph". See MPEP 2136.05. Likewise, a CIP only provides priority and can be used as a reference only for what is actually disclosed in the parent (MPEP 2136.03 IV). Finally, even the USPTO Board, in an unpublished opinion actually reviewed the disclosure of the provisional, which was exactly the same as the utility application, before declaring that the provisional filing date could be relied on as the 102(e) date of the utility application. See, *Ex parte Ushioda*, 2001 Pat. App. LEXIS 106 (October 2001) (copy attached to response). Accordingly, Klinger and Crichton should only be afforded a 102 (c) of their provisionals for what their respective provisionals are shown to disclose by the Examiner, i.e. the burden is on the Examiner to establish the prior art reference dates relied upon in the rejections.


IV. Conclusion

Having fully responded to the Office action, the application is believed to be in condition for allowance. Should any issues arise that prevent early allowance of the above application, the examiner is invited contact the undersigned to resolve such issues.

To the extent an extension of time is needed for consideration of this response, Applicant hereby requests such extension and the Commissioner is hereby authorized to charge deposit account number 502117 for any fees associated therewith.

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Respectfully submitted,

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